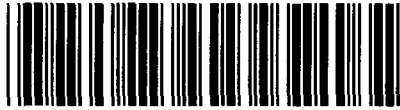




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SOAH DOCKET NO. 473-19-1265  
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JOINT APPLICATION OF ONCOR	§	BEFORE THE STATE OFFICE
ELECTRIC DELIVERY COMPANY,	§	
LLC AND AEP TEXAS INC. TO AMEND	§	
CERTIFICATES OF CONVENIENCE	§	
AND NECESSITY FOR A DOUBLE	§	OF
CIRCUIT 345-KV TRANSMISSION	§	
LINE IN PECOS, REEVES, AND WARD	§	
COUNTIES (SAND LAKE – SOLSTICE	§	
CCN)	§	ADMINISTRATIVE HEARINGS

**OCCIDENTAL PERMIAN LTD., OXY DELAWARE BASIN, LLC, OXY  
USA INC., OXY USA WTP LP, HOUNDSTOOTH RESOURCES, LLC, AND  
OCCIDENTAL WEST TEXAS OVERTHRUST, INC.'S REPLY  
TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

May 6, 2019

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TEXAS OVERTHRUST, INC.

176

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I. INTRODUCTION AND SUMMARY

None of the issues raised in other parties' Exceptions to the Proposal for Decision (PFD) change the fact that Route 325 Modified (E1/F1 and K11)<sup>1</sup> is a better choice than the "central corridor" routes. Route 325 Modified minimizes the impact of this transmission line on the affected community and landowners (including mineral rights owners) by using the less developed "western corridor" to avoid the bulk of the oil and gas activity that makes up the vast majority of the surface development in this study area.<sup>2</sup> While Oxy believes that the undisputed<sup>3</sup> benefits of Route 325 Modified justify its adoption, the PFD rejected that route based primarily on its increased cost compared to Route 320.<sup>4</sup>

Oxy is not asking the Commission for a handout, and is prepared to bear its fair share of the burden of this critical infrastructure project. To that end, ***Oxy is willing to make significant right-of-way concessions along Route 325 Modified.*** As discussed in Oxy's Exceptions, Oxy

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<sup>1</sup> For purposes of Oxy's Exceptions, "Route 325 Modified" refers to a route that incorporates Oxy and COG Operating LLC's ("Concho's") proposed modifications to Links E1/F1 and K11.

<sup>2</sup> Tr. (Marusak Cr.) at 40:19-41:4; *see also* Oncor/AEP Ex. 1, Application, Attachment 1 (Environmental Assessment) at 3-70 ("Most of the study area consists of rural, undeveloped land used primarily for oil and gas production."); *id.* at 3-73 ("[T]he oil and gas industry is the primary aesthetic for a great majority of the study area.").

<sup>3</sup> Proposal for Decision (PFD) at 24 ("The record does not contain statements from the Applicants or others who support Route 320 rebutting Oxy's contentions regarding health, safety, and lost revenues that could occur if Route 325 Modified is not approved.").

<sup>4</sup> *Id.* at 10.

owns the surface of seven tracts in this study area: one tract along Link C2 (that appears on both Route 320 and Route 325 Modified) and six tracts that make up a majority of Links E1/F1 (that appear only on Route 325 Modified).<sup>5</sup> Oxy is willing to negotiate<sup>6</sup> with the utilities to offset the cost of land and right-of-way across the six tracts that Oxy owns along Links E1/F1.<sup>7</sup> As discussed below, this is a significant concession that Oxy hopes will emphasize its willingness to work with both the utilities and the Commission to avoid undue interference with Oxy's densely-packed and rapidly expanding operations along the central corridor.

## **II. PROCEDURAL HISTORY**

Not addressed.

## **III. JURISDICTION AND NOTICE**

Not addressed.

## **IV. ISSUES RELATING TO THE APPLICATION**

Not addressed.

## **V. ROUTE SELECTION**

### **N. Alternative Routes or Facility Configurations**

#### **2. Landowner Contributions**

Oxy believes that the undisputed benefits<sup>8</sup> of avoiding the densely packed and rapidly expanding oil and gas operations along the central corridor are sufficient to justify the additional cost and length of Route 325 Modified. Nevertheless, Oxy is also willing to make significant contributions toward the construction of that route. First, as discussed in Oxy's Exceptions, by advocating for Route 325 Modified, Oxy is offering to accept this line along *seven tracts* where it

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<sup>5</sup> See Oncor Ex. 2 (Notice Affidavit) at 18 (Oxy entities were the notified surface owners for Tract 420 along Link C2 and Tracts 204, 214, 215, and 328 along Link F1); Oxy Ex. 8 (Pfefferle Affidavit) (attesting to Oxy's ownership of the surface estate on Tracts 205 and 206).

<sup>6</sup> Oxy regularly negotiates rights-of-way and easements with utilities and does not expect that there will be any issue in coming to reasonable terms in this instance.

<sup>7</sup> Oxy wishes to assign some value to the right-of-way on each tract for tax and accounting purposes. However, it envisions providing right-of-way for all seven tracts at a total cost that is equal to a reasonable market value of the right-of-way across Tract 420 on Link C2. In this way, the amount that Oxy receives in exchange for right-of-way across surface tracts that it owns would be the same for Route 320 and Route 325 Modified.

<sup>8</sup> Proposal for Decision (PFD) at 24 ("The record does not contain statements from the Applicants or others who support Route 320 rebutting Oxy's contentions regarding health, safety, and lost revenues that could occur if Route 325 Modified is not approved.").

owns the surface estate,<sup>9</sup> compared to just one such tract along Route 320.<sup>10</sup> The Commission regularly considers landowners' willingness to accept transmission lines across property they own when determining whether to adopt alternate routes.<sup>11</sup> In this case, Oxy has also contributed to the construction of Route 325 Modified by proposing a modification to Links E1/F1 (largely across tracts that Oxy owns) that would **decrease** the cost of the line by **\$180,000**.<sup>12</sup>

On top of those contributions, Oxy is now offering to offset the cost of land and right-of-way across the six surface tracts that it owns along Links E1/F1 on Route 325 Modified.<sup>13</sup> This is a substantial contribution to the construction of this line. Oxy's surface rights along Links E1/F1 span approximately three miles,<sup>14</sup> and the utilities' cost estimates value "Right of Way and Land Acquisition" costs at approximately **\$205,000 per mile**.<sup>15</sup> Right-of-way concessions are a factor that this Commission has recently considered when selecting a more expensive route in order to mitigate the impact of a transmission line on a particular landowner,<sup>16</sup> and the Commission should give Oxy's commitment significant weight when selecting a route in this case.

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<sup>9</sup> See Oncor Ex. 2 (Notice Affidavit) at 18 (Oxy entities were the notified surface owners for Tract 420 along Link C2 and Tracts 204, 214, 215, and 328 along Link F1); Oxy Ex. 8 (Pfefferle Affidavit) (attesting to Oxy's ownership of the surface estate on Tracts 205 and 206).

<sup>10</sup> Oncor Ex. 2 (Notice Affidavit) at 18 (Oxy entities own the surface of Tract 420 along Link C2).

<sup>11</sup> See, e.g., *Application of Southwestern Electric Power Company to Amend its Certificate of Convenience and Necessity for a Proposed 345-kV Double-Circuit Transmission Line Within Bowie County*, Docket No. 40685, Order at 8-9, FoF 39 (Aug. 30, 2013) ("To the extent that modified route link configurations have been incorporated into the Stipulation due to individual landowner preference, the affected landowners have made adequate contributions to offset any additional cost associated with the accommodations by agreeing to a route across their property."); *Application of South Texas Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for the Bakersfield-to-Big Hill 345-kV CREZ Transmission Line in Pecos, Crockett, and Schleicher Counties*, Docket No. 38648, Order at 6, FoF 42 (Feb. 2, 2011) ("Several landowners have offset additional cost associated with such modifications by agreeing to accept the route being longer across their property.").

<sup>12</sup> Oncor/AEP Ex. 12, Rebuttal Testimony of Wilson P. Peppard at 7 (cost estimates for proposed modifications).

<sup>13</sup> See Note 7, *supra*.

<sup>14</sup> See Oncor/AEP Ex. 1, Application, Attachment 1 (Environmental Assessment) at Appendix G, Figure 3-1A (comparing scale to length of Links E1/F1 that cross Tracts 204, 205, 206, 214, 215, and 328).

<sup>15</sup> Dividing the utilities' estimated "Right-of-way and Land Acquisition" cost for any proposed route by the length of that route yields approximately \$205,000 per mile. Cf. Oncor/AEP Ex. 1, Application, Attachment 3 (Cost Estimate Spreadsheet) at Row 5 (listing "Right-of-way and Land Acquisition" cost for each route); with Oncor/AEP Ex. 1, Application, Attachment 12b (Environmental Data for Routes Filed in the CCN Application) at Row 7 (showing length of each alternative route in miles).

<sup>16</sup> See *Joint Application of Oncor Electric Delivery Company LLC and Brazos Electric Cooperative, Inc. to Amend Certificates of Convenience and Necessity for the Cogdell to Clairement 138-kV Transmission Line in Kent and Scurry Counties*, Docket No. 47808, Final Order at 8, FoF 54B (Jan. 18, 2019).

## **VI. TEXAS PARKS AND WILDLIFE DEPARTMENT**

Not addressed.

## **VII. OTHER ISSUES**

Not addressed.

## **VIII. CONCLUSION**

Oxy respectfully requests that the Commission adopt Route 325 Modified (E1/F1 and K11) or Route 325, as proposed. As described in Oxy's Exceptions, Route 325 Modified follows the most rational path through this study area, and would minimize the negative impacts of this line on oil and gas development, royalty interest owners, the local economy, and ultimately, the State of Texas. Route 325 Modified was not opposed by any intervenor to this proceeding, and despite its increased cost, Oncor witness Ms. Brenda Perkins referred to it as "*an attractive route the Commission should strongly consider.*"<sup>17</sup>

Oxy is willing to bear its fair share of this critical infrastructure project, and is not trying to shift the burden of this line onto other landowners. Due to the nature of its operations in the study area, Oxy will bear much of the burden of this transmission line regardless of which route the Commission selects. However, due to the nature and spacing of development in this study area, Route 325 Modified is a significantly better choice, and Oxy is offering to make concessions on surface tracts that it owns in an effort to offset the additional cost and length of that route. The Commission should strongly consider those contributions when deciding this case.

Alternately, if the Commission selects Route 320, Oxy asks that the Commission incorporate Oxy and Concho's proposed modification along Links J1/J7, which will at least partially mitigate the negative impacts of this transmission line on Oxy's operations.

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<sup>17</sup> Oncor/AEP Ex. 13, Rebuttal Testimony of Brenda Perkins (Perkins Reb.) at 4 (emphasis added).

Respectfully submitted,

THOMPSON & KNIGHT LLP



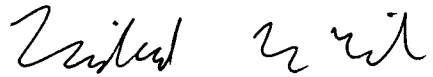
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**CERTIFICATE OF SERVICE**

I, Michael McMillin, Attorney for Oxy, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 6th day of May, 2019, by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.



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Michael McMillin